

March 4, 2004

Mr. Eric Larsen
Washington Department of Fish and Wildlife
Oil Spill Team
600 Capitol Way North
Olympia, WA 98501

Re: Washington Department of Fish and Wildlife (WDFW) Oiled Wildlife Care Standards Rulemaking

Dear Eric:

Thank you for the opportunity to provide input into the rulemaking process governing oiled wildlife care standards.

In preface to our detailed comments below, we believe that it is difficult to properly frame the issues that concern WSMC since no performance or planning standard has been discussed. In the absence of a performance or planning standard, the bird care standards/procedures appear reasonable. These procedures on how to clean birds have been studied and worked on by some of the best experts in this field. Industry representatives have been present at the various workshops hosted by your Department. Many of the questions on these care standards have been answered and in some cases the standards have been altered due to the comments raised at workshops. This has been an excellent cooperative and collaborative process.

WSMC offers the following comments:

1. The most significant issue is how many, how fast, etc. The proposed bird cleaning standards should not become effective until performance standards are adopted. What would happen if the care standards are formally adopted and we have a spill with significant bird involvement prior to the performance standards being known? For all concerned, it is important to have these standards available and ready to go, but it is also necessary that the standards be made in conjunction with the applicable planning or performance standards. Planning standards and cleaning procedures need to progress together.
2. In conjunction with rescue standards and procedures, mobile response capability is important. The need for mobile capability in addition to long term care facilities, given various spill scenarios, should be addressed.
3. How will triage and release decisions be made? Will there be criteria issued? This needs to be addressed somehow to help match response resources to productive outcomes. Without triage, too many birds might receive rehabilitation efforts that are wasted to the detriment of other oiled wildlife needing attention and without release criteria, too many birds may be held too long.
4. What are the approved collection processes? This sometimes becomes a controversial issue.

5. WSMC would like for the WDFW to expand on and state the basis by which WDFW and USFWS will determine whether or not birds can be transported out of state to other care facilities. We understand that the determination will be made when an ICS is activated for a spill. We suggest that the WDFW provide a checklist, procedural mechanism, or criteria that will be used to make the decision, if and when, a request to transport oiled wildlife out of state is made on the day of the spill. Doing so, will facilitate and expedite the care of the oiled wildlife, increasing the chances of successful recovery.
6. WSMC understands that present Washington State law requires the Washington Department of Fish And Wildlife to chair a coalition of government agencies and other organizations for the purpose of developing a plan for coordinating wildlife rescue planning. For many years, the contingencies for oiled wildlife have been met via the coordination of the Washington Wildlife Rescue Coalition. Industry has supported this effort with contributions of equipment and mobile trailers. How will this law, which requires the Washington Wildlife Rescue Coalition to develop a rescue plan, work in conjunction with the new rules?
7. WSMC suggests that the Washington Wildlife Rescue Coalition continue to coordinate planning efforts. A plan should be developed that can be utilized by all plan holders. The expertise of the Washington Wildlife Rescue Coalition is important due to the technical and very sensitive nature of wildlife rescue. This expertise should not be disregarded or lost. WSMC does not support independent development of Wildlife rescue plans by individual plan holders. Such a mix of different plans and processes would result in chaos and uncertainty during the pressure and intensity of a major oil spill event. In WSMC's opinion, prior to July, 1999, the Wildlife Coalition's efforts at coordination of the planning efforts with a pre-identified treatment facility location and equipment worked well. Conversely, after July, 1999, when the Coalition offered up a fixed non-funded facility as the only option, WSMC believes that the planning and coordination efforts of the Coalition were less effective and not consistent with a flexible, coordinated and effective response. The Coalition should be allowed and encouraged to continue its work similar to the effective planning done prior to July, 1999.
8. Is it the Department's intent to continue to rely upon the Washington Wildlife Rescue Coalition to coordinate wildlife rescue activities and planning in accordance with the requirements of current state law? If so, then it seems appropriate that the Coalition coordinate the planning efforts to meet planning and performance standards, using the standards of care, as adopted in this rule. What is missing from the rule that established the Washington Wildlife Coalition is a workable funding mechanism. WSMC suggests that this part of the rule be reviewed.
9. As discussed in item 1, above, the obvious question that has been frequently asked, is what will be the performance standard? How many birds must be cleaned and during what period of time? When does the location have to be ready for the first bird? Will the standard be written in such a way as to permit various options to be employed or will the standard be designed to leave a fixed facility as the only option? WSMC strongly suggests that the planning or performance standards, when developed leave open options for using available and suitable pre-identified facilities and locations for use as sites for rescue facility or facilities, on an as needed basis. It is hoped that the standard is not so stringent, inflexible and poorly designed as to require a fixed facility or facilities as the only option to meet the standards. WSMC supports the creation of improved wildlife rescue capabilities (including pre-defined locations or facilities), but does not endorse the construction of a fixed facility (or facilities) as the only alternative.

10. Overall the rules should defer to the Unified Command Process authority to "adapt" to the specifics of the incident. Without that flexibility built into the rules, liability concerns (and not what constitutes the best response) will drive the process by literal application of words to the event. Words should not preclude use of common sense adjustments to do the right thing. Otherwise the supporting rules will pre-decide "exactly" what to do in all circumstances.

It is important to WSMC that response organizations and plan holders be able to maintain their approved plans and meet the wildlife rescue standards in a way that fulfills the effective standards as developed by the experts in the field. We strongly believe that there are reasonable, practical, and economical ways to meet the important needs of wildlife rescue.

WSMC would be pleased to meet with WDFW personnel to more fully discuss our comments and concerns and to answer any questions you may have.

Thank you for your consideration of our comments.

Sincerely,

ROGER D. MOWERY
Executive Director

cc: WSMC Board of Directors
Mike Moore, PSSOA
Marine Exchange of Puget Sound for file
Jim Riedel, NRCES
Chris McCartan, Clean Sound Cooperative